

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 7th June 1972****The Council met at half-past Two o'clock**

[Mr PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR CRAWFORD MURRAY MACLEHOSE, KCMG, MBE
THE HONOURABLE THE COLONIAL SECRETARY (*Acting*)
MR MICHAEL DENYS ARTHUR CLINTON, CMG, GM*, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, CBE, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DONALD COLLIN CUMYN LUDDINGTON, JP
THE HONOURABLE THE FINANCIAL SECRETARY
MR CHARLES PHILIP HADDON-CAVE, JP
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, CBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE JAMES JEAVONS ROBSON, CBE, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION
DR THE HONOURABLE GERALD HUGH CHOA, CBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE DENIS CAMPBELL BRAY, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE PAUL TSUI KA-CHEUNG, OBE, JP
COMMISSIONER OF LABOUR
THE HONOURABLE IAN MACDONALD LIGHTBODY, JP
COMMISSIONER FOR RESETTLEMENT
THE HONOURABLE SIR YUET-KEUNG KAN, CBE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, OBE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE OSWALD VICTOR CHEUNG, OBE, QC, JP
THE HONOURABLE LO KWEE-SEONG, OBE, JP

ABSENT

THE HONOURABLE JACK CATER, MBE, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE WOO PAK-CHUEN, OBE, JP
THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, OBE, JP
THE HONOURABLE GERALD MORDAUNT BROOME SALMON, JP
THE HONOURABLE ANN TSE-KAI, OBE, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR RODERICK JOHN FRAMPTON

Papers

The following papers were laid pursuant to Standing Order No 14(2): —

<i>Subject</i>	<i>LN No</i>	
Subsidiary Legislation: —		
Road Traffic Ordinance.		
Road Traffic (Roads and Signs) (Amendment) Regulations 1972	96	
Births and Deaths Registration Ordinance.		
Births and Deaths Registration (Amendment of First Schedule) Order 1972	97	
Estate Duty (Amendment) Ordinance 1972.		
Estate Duty (Amendment) Ordinance 1972 (Commencement) Notice 1972	98	
The Colonial Fire Brigades Long Service Medal Hong Kong		101
Detention Centres Ordinance 1972.		
Sha Tsui Detention Centre Order 1972	102	
Training Centres Ordinance.		
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Probate and Administration Ordinance 1971.		
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Oral answers to questions

Mass transit railway

1. SIR YUET-KEUNG KAN asked: —

Has a decision yet been taken on the proposed mass transit railway and, if one has, what is it?

THE FINANCIAL SECRETARY (MR C. P. HADDON-CAVE): —Sir, the short answers to my honourable Friend's questions are: yes, a decision has been taken; and it is that the construction of the full mass transit railway will be proceeded with subject to satisfactory arrangements being made for financing it and for letting contracts. But these are short answers, Sir, to two deceptively simple questions and I think I should explain in some detail—before my honourable Friend asks me to do so—precisely what they mean.

First of all the Government has decided, after the most careful consideration, that if the demand for movement in Hong Kong in the late seventies and thereafter is to be satisfied, the surface public transport system must be augmented, if at all possible, by an underground mass transit railway. The alternative would seem to be an unacceptable degree of congestion of the road network—unacceptable in both economic and social terms. But, as I stressed in both the budget speech and in my speech winding up the budget debate, the addition of a mass transit railway must be coupled with the expansion and improvement of the road network, with a programme designed to increase the carrying capacity, efficiency and comfort of public transport facilities and with policies designed to optimize the use of available road space. This is because a mass transit railway cannot, on its own, constitute a solution to our emerging transport problem; and, in particular, it will not mean that our road network can be left free for unlimited use by personalized forms of transport. This will be so even when the road network has been fully developed in accordance with the Long Term Road Study. Present plans provide for expenditure on road reconstruction and development of \$1,800 million spread over the eight years ending 1979-80 and, undoubtedly, this amount will have to be increased as the programme is updated. The fact is that the mass transit railway when fully completed will cater for only one third of public passenger journeys that people are expected to make by the mid-1980s (about 2½ million journeys out of a total of 7½ million) although, admittedly, it will carry about half of all passengers in the more densely populated areas where the railway will run. In doing so, efficiently and swiftly, it will enable us to maintain that degree of mobility of people and goods vehicles without which our economic and social life would be endangered.

Secondly, the Government has decided that there is a good chance that three of the four questions I posed in my winding up speech in the budget debate, and which I said had to be answered before a decision could be taken whether or not to go ahead—the Government has decided that three of these four questions can be answered affirmatively. That is to say, we believe, *first*, that a substantial sum of public money can be committed to assist in financing the project; *secondly*, that the railway can be constructed without undue disruption; and *thirdly*, that the system can be operated in such a way as to generate a sufficient cash flow to service the investment and cover operating costs. So the way is now clear to see whether an affirmative answer can be given to the fourth question, namely, whether sufficient outside capital finance can be obtained on appropriate terms as regards interest rates and repayment arrangements. To some extent the possibility of raising finance will depend on how much finance has to be found. On the basis of mid-1970 prices, we reckon that the

[THE FINANCIAL SECRETARY] **Oral Answers**

minimum net capital requirement will be over \$5,000 million. But it is bound to be higher and, indeed, according to our calculations, the net capital requirement could be *considerably* higher than this figure of \$5,000 million depending on the assumptions made as regards cost escalation and hence of average costs over the whole construction period (and we can do no more than make certain assumptions until tenders are invited and contracts let). The net capital requirement will be less than total capital expenditure, including interest on the accumulated debt, because revenue from fares on the initial stages, as they are opened, will start to flow in from early 1977 onwards and these will provide some offset from that year on.

The financing problem is closely linked with two other problems, namely, the form of tendering and the letting of contracts and the most appropriate operational arrangements. These issues will have to be looked at separately, but, eventually, they will need to be brought together in a coherent scheme for the financing, construction and operation of the system.

To work out the best methods of resolving these three problems with a view to assembling a package on the basis of which a final decision can be taken whether or not to go ahead—that is to say, whether it is *possible* to go ahead—a small Steering Group has been established under my chairmanship. This Group will go fully into all the possibilities of financing, constructing and operating the mass transit railway, including consultations with financial interests and groups of construction companies and manufacturers of equipment which may come forward with ideas. This Group has already held its first meeting and is under direction to complete its work and to present its findings to Executive Council within six months. The Steering Group will be greatly assisted by the ready willingness of our bankers—the Hong Kong Bank—to assist us in exploring the various ways and means of raising non-Government finance and a senior official of the Bank has been appointed to serve on the Group.

Concurrently with this work, and subject to the provision of funds by the Finance Committee, the consulting engineers are to be immediately re-engaged and will be instructed to push ahead as rapidly as possible with all the necessary detailed route investigations, preparation of designs and drawing up of contract documents for the first two stages of the railway, that is to say, a line commencing at Choi Hung, linking the Resettlement Estates of Wong Tai Sin, Lok Fu and Shek Kip Mei with the Nathan Road corridor and then running under the harbour to the central business district of Hong Kong to terminate at Western Market.

Additional surveys and extensive ground investigations will also be undertaken by firms of specialist consultants and contractors as a matter of urgency, as this will be an essential prerequisite to the preparation of detailed designs for the civil engineering works.

It is also intended to accelerate work on certain associated public works, such as the reclamation of the area at Kowloon Bay intended for the mass transit maintenance depots and the construction of relief roads, to ensure that these are phased in with the mass transit construction programme.

Finally, work will be started on drafting legislation to provide for the compulsory acquisition of property (where this is unavoidable), the alteration of streets and the compensation of those people whose property will be interfered with in the course of construction. The preparation of this and other enabling legislation will be supervised by the Steering Group, which will also keep a watching brief on the consultants' activities and the progress of the ground investigations and the various associated works I have just mentioned.

In other words, Sir, certain essential pre-construction work is being undertaken now so that no time will have been lost should the financial explorations prove successful and a firm decision is taken later on this year to proceed with actual construction.

As I have said, such an eventual decision on whether to go ahead definitely with the construction of the railway will be taken in the light of the findings of the Steering Group as to whether firm possibilities exist of raising the requisite finance on reasonable terms. This decision will be taken before the end of this year and, if it is favourable, every effort will be made to start construction early in 1974. If it is not favourable, *either* because the finance is not available in sufficient quantities and on appropriate terms *or* because the cost turns out to be inordinately high *or* both, all work on the project will cease and it will not be proceeded with further.

Sir, while the Government has taken a firm decision, in principle, to proceed with the mass transit railway and has every intention of exploring all possible sources of finance, we are conscious of the size of the task—in physical as well as financial terms—we have set ourselves. The complete system will take many years to build, though the first stage will be operational within 3¼ years from the time construction begins and the second stage 15 months later. We are confident that it is a feasible project to construct, that being capital intensive it will not make excessive demands on the labour force in the construction industry and that it is the best system of all the alternatives examined. But at mid-1970 prices it is estimated to cost over \$6,000 million, including interest over the construction period—

[THE FINANCIAL SECRETARY] **Oral Answers**

or, as I said earlier, just over \$5,000 million after ploughing back the revenue earned after the opening of the early stages. Construction costs are, however, rising and can be expected to rise further, so the actual cost will probably be much greater than this. Clearly, an enormous sum of money will have to be raised. And then there is the problem of ensuring that the system is financially viable in the sense that the capital cost and accumulated interest can be repaid from the revenue from fares and other sources over a given period of years.

Clearly, Sir, it is incumbent on Government to be very sure of all the financial aspects of the project before committing the community to such tremendous expenditure. In particular, we must not put *either* our ability to finance our other commitments *or* our liquidity *or* our fiscal policies at risk.

Sir, if in the end, it does not prove possible to build the mass transit railway, I must make it clear that the measures needed to ensure that people can continue to get to and from work and for goods to continue moving will need to be more and more severe as time goes on. They will certainly not be popular and will be greatly criticized by some. Yet they will be necessary in the general interest if Hong Kong is to continue to function as a viable community in the years to come. It is because the Government would like to avoid having to introduce such severe measures that it has taken a decision in principle to build the mass transit railway and I can assure honourable Members that every effort will be made to resolve the financial problems involved.

SIR YUET-KEUNG KAN: —Sir, taking the last point of my honourable Friend's reply first, if it should later be decided not to build the mass transit railway how much expenditure would have to be written off?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, if one excludes the cost of works associated with the mass transit railway but within the existing public works programme, and if one excludes also the cost of compensation and acquisition of properties which has been going on for some time in order to protect the route, then I think the amount of nugatory expenditure by the end of this year will be something over \$40 million.

SIR YUET-KEUNG KAN: —Sir, having regard to the heavy expenditure likely to be involved in the mass transit railway, and having regard to the heavy expenditure in the road programme already approved, can Government assure this Council that other equally important projects in the Public Works Programme would not be prejudiced?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —It is the Government's intention, Sir, to protect our ability to finance our recurrent services and, as regards the honourable Member's concern that the mass transit railway as a capital project might distort our priorities inside the Public Works Programme as a whole, I can assure him that we shall regard the mass transit railway as outside the Public Works Programme in the sense that we know it today. In other words I can give an unequivocal answer "yes".

MR WILFRED S. B. WONG: —Sir, my honourable Friend, the Financial Secretary has said that all sources of financing the mass transit system will be considered. I take it that a Government bond issue is not excluded from the consideration?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —It is not excluded, Sir.

DR S. Y. CHUNG: —Sir, my honourable Friend said that the project would be capital intensive and would not make excessive demands on the labour force in the construction industry. Will my honourable Friend indicate the maximum size of the labour force required at any one time during the construction of the underground railway?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —May I ask the Director of Public Works, Sir, to answer that question?

MR J. J. ROBSON: —Sir, it is extremely difficult to answer that question because it would depend entirely on the method employed for the construction. The main labour force will be employed in the civil engineering works. If they employ the machine which has been developed in other parts of the world, which is a great big earth auger which simply goes through and bores the earth out, the amount of labour would be relatively low. Can I put it this way—the labour force will possibly be about one and a half times to twice the size of the labour force employed on the cross harbour tunnel. When the underground comes to be built the cross harbour tunnel will be finished and I think the industry can manage this.

Waterworks Office

2. MR WONG asked: —

Will Government take urgent steps to reinforce the staff of the Waterworks Office so as to enable complaints to be dealt with speedily; and will Government also state how long it is likely to take to dispose of outstanding complaints which have not yet been dealt with?

Oral Answers

MR ROBSON:—Sir, complaints to the Waterworks Office are in general about water bills, and demands on the accounting side of the Waterworks Office activities, which include the public enquiry service, have grown very rapidly since 1965 when the policy was introduced of encouraging individual flats and establishments in a building to have separate meters. The number of consumers is now 430,000 as compared with 144,000 five years ago and growth continues at the rate of about 60,000 new accounts each year. To deal with this expansion of business it has been necessary both to work extensive overtime and to amend the period between the issue of successive bills from three months to four months—this latter measure being under consideration now.

Complaints have probably risen faster than new accounts and unfortunately they far exceed the number which the accounting organization can deal with efficiently and quickly. Written complaints and enquiries are currently received at the rate of about 1,750 a month while complaints made either by telephone or in person number about 3,500. Posts for additional accounting staff to help to expand and update the accounting systems used in the Waterworks Office were approved at the beginning of the year and it is hoped some of them can be filled soon. Further staff proposals are under consideration by Government and still more are under preparation in the Waterworks Office.

But additional staff, especially at the senior and middle management level, is not felt to be the full answer and a proposal to make use of computers on the lines employed by the power companies was made some time ago. This is probably long overdue but I regret that, even when approved, compiling and implementing the necessary computer programmes will take say 2 or 3 years.

In the meantime I can assure you, Sir, that the existing staff of the Waterworks Office is doing all it can with its restricted facilities to provide as good a service as it can to the public. By working overtime the existing backlog of enquiries is being reduced but until the additional staff and facilities I have referred to are provided I am afraid that the service which the public should perhaps expect to receive cannot be provided.

Road repairs at peak hours

3. MR SZETO WAI asked:—

Will Government review the existing arrangements for effecting minor repairs to roads which are heavily used by vehicles (such as Queensway) to ensure that such repairs are, so far as practicable, avoided during peak hours?

MR ROBSON: —Sir, my honourable Friend asks for a review of existing arrangements for effecting minor repairs to roads which are heavily used by vehicles to ensure that such repairs are, as far as practicable, avoided during peak hours. This is in fact the present arrangement but it is becoming more and more difficult to implement due to the general build-up of traffic in the Colony's road network.

As Chairman of the Transport Advisory Committee, Mr SZETO is aware the volume of traffic on our city streets is now such that the hourly traffic volume which previously rose in the morning and evening to clearly defined peaks of, say, twice the volume of any other hours of the day now remains high throughout daylight hours and, in some locations, only drops to a low level very late at night. Since repairs and maintenance not only to our roads but also to the many utility services laid under them must continue despite traffic conditions, then, under the traffic conditions I have described, decisions have to be taken on which section of the community is to be inconvenienced—the road user if work is carried out during the day or the resident if night work is resorted to. It is also relevant that work at night is more difficult to carry out, more expensive, and, because it sounds infinitely more noisy than during the day, possibly more objectionable but to a lesser number of people.

Nevertheless major resurfacing work, replacement of manholes and repairs to road joints on main roads is often carried out after midnight but only after consulting the traffic police and, if necessary, the Transport Department.

But my honourable Friend's question relates only to minor road repairs and quotes Queensway as an example. This may have been prompted by repairs in that road to a large number of pot holes caused by the recent heavy rains. The work had to be carried out expeditiously so as to reduce further deterioration of the road but nevertheless it is relevant that the work at the junction of Murray Road started at 8 o'clock in the evening and was completed at midnight, work in front of the New Rodney Block was not started until 10 in the morning and was completed by 12.30 p.m., and work outside Victoria Barracks started at 7.30 in the evening and was completed three hours later.

I have mentioned the utility services which are laid beneath our roads and the bulk of the openings made in the roads can be attributed to them. During the quarter from January to March 1972 there were over 4,000 of these openings the majority in the urban areas. Because repairs to utility services are usually required urgently, many of the road openings are made without the prior knowledge of the Public Works Department but, of course, it is the Department which is usually blamed for any inconvenience created.

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Sir, from the situation I have described I think it will be apparent to the Members of this Council, especially those on the Public Works Sub-Committee of Finance Committee who have a direct interest in road-works, that ever increasing night work is inevitable. I have asked for an amendment to the Summary Offences Ordinance to enable me to authorize night work of short duration when I am satisfied that this is necessary because of tidal, traffic or emergency conditions. If granted these powers will, I am afraid, bring with them the responsibility for ensuring that night work is carried out as quietly as possible. This will be done but even so I am afraid that it will not be possible to so reduce the noise level as to make night work unobjectionable to the residents living nearby, and on these occasions I hope it will be remembered that work would not be taking place at night if it was considered feasible to carry it out during the day.

MR SZETO: —Sir, my honourable Friend mentioned that most of the repair works to the public utilities are carried out without the knowledge of the Public Works Department. Is it not time to consider whether it is important or even desirable to improve the co-ordination between the Public Works Department and the utility companies?

MR ROBSON: —I would like to correct that impression, Sir. I said that much of the work was carried out without our knowledge, not most of it. (*Laughter*). But as regards co-ordination, Sir, we have got two committees on either side of the harbour—one in Kowloon and one in Hong Kong—which meet monthly and they try to anticipate the work to be carried out in the following month by co-ordinating the various demands. Any road opening which is required is approved by a permit which lays down the conditions under which the work is approved and also gives the location.

Now this is fine when the utility companies can anticipate repairs; but in the case of an emergency, for instance when a main power cable breaks down and the neighbourhood is in darkness, they can't ask permission; they just have to go in and find the fault and repair it. This is happening quite a lot. Similarly with a gas leak. They can't wait to ask for permission to dig up the road; they have got to go and repair the gas leak before someone suffers from it.

By and large I think the co-operation is good but I think, also, that my honourable Friend is right—it should be improved and this is being looked into.

Secondary modern school places

4. DR CHUNG asked: —

Will Government (*a*) state the number of places available and the number of applicants for such places in secondary modern schools each year for the past two years, and (*b*) give its estimate of the number of places available and the number of applicants for such places in the coming academic year 1972-73?

MR J. CANNING: —Sir, there are five secondary modern schools with a total of 3,680 places. These schools have been in existence for some time and the number of applicants for entry to these schools has increased steadily over the years. For the academic year beginning September 1970 there were over 4,700 applicants and for the 1971-72 academic year there were over 7,600 applicants. The number of places for entry to Form 1 is about 1,450.

The number of places available in Form 1 for the coming academic year will be about the same and present indications are that the number of applicants in September of this year will be in excess of 8,000.

DR CHUNG: —Sir, in view of the rapidly rising demand by students—about six applicants for every place available—and of the increasing need of industry for graduates from secondary modern schools, will Government review its policy on the development and expansion of these secondary modern schools?

MR CANNING: —Sir, the present policy does not provide for any increase for secondary modern schools but it is planned to increase the number of places in pre-vocational schools—which are somewhat similar. It is planned to have an increase of over 6,000 in these places and these, together with the existing provision, will give a total of 11,000 places in both secondary modern schools and pre-vocational schools.

Industrial Training Council

5. DR CHUNG asked: —

Is Government in a position to state its view on the establishment of a Hong Kong Industrial Training Council as proposed by the Industrial Training Advisory Committee in its final report submitted two years ago and, if not, when is Government likely to come to a decision on this important matter?

Oral Answers

MR PAUL K. C. TSUI: —Sir, I am pleased to report that detailed examination of the Final Report is now almost completed, and I hope it will soon be possible to submit to Your Excellency in Council firm recommendations for the setting up of a permanent Training Council.

Meanwhile, I would like to assure my honourable Friend that Government is at one with the Industrial Training Advisory Committee in that it fully realizes the importance of this matter: a reorganized industrial training complex along the lines as indicated in the ITAC Final Report should go a long way to solve the many problems which confront us in the field of industrial training, provided that we are careful to ensure that we establish the right machinery to achieve the results we all desire. Because of this need for care, we have been examining all aspects of the matter in detail.

DR CHUNG: —Sir, will my honourable Friend indicate how soon his firm recommendation will be submitted to Your Excellency in Council—within a period of a couple of weeks or a couple of months?

MR TSUI: —I cannot be specific, Sir, but I think it will be a matter of one or two months. In any case it is hoped that a final decision will be made before the end of the year.

Tenants of condemned buildings

6. MR WONG asked: —

In order to prevent unnecessary distress and uncertainty, will Government take steps to ensure that whenever a building is condemned as dangerous the domestic tenants are informed, prior to the condemnation notice being issued or publicized, of their position in regard to alternative accommodation, in particular whether they would be accommodated in Government low cost housing estates, resettlement estates, resite areas, or transit camps?

MR ROBSON: —Sir, I am pleased to be able to advise that when a building is condemned by the Building Authority, the occupants are registered and, within a few days, are offered accommodation in public housing as appropriate depending on availability and taking into account their personal preferences. This applies to all who can show that they are either genuine tenants or roof-top or other squatters who were registered in the 1964 survey.

Usually this accommodation is ready on or before the date the closure order becomes effective and it is only in emergency cases, where sufficient notice cannot be given, that temporary accommodation in transit camps is offered until suitable accommodation can be allocated. Persons who cannot show they are genuine tenants or registered squatters are offered space in a resite area.

The Building Authority is, of course, bound to take statutory action in respect of dangerous buildings as soon as possible but, when a building is to be closed, the posting on the premises of the Building Authority's notice of intention is accompanied by registration of the tenants and, whenever possible, allows an appropriate period of grace for the occupants to remain in the building. This step and the arrangements I have described, do, I think, meet my honourable Friend's point.

Piledriving noise

7. SIR YUET-KEUNG KAN asked: —

Will Government take steps, if necessary by legislation,

- (a) to ensure that piledriving which creates a noise to such intensity as to be a danger to health can be stopped immediately;
- (b) to ensure that persons responsible for piledriving are required to take such steps as are feasible to silence or reduce the noise from piledrivers;
- (c) to restrict the hours for piledriving;
- (d) to provide relief from piledriving noise on public holidays?

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS): —Sir, it is already an offence to carry out piledriving, if this causes sufficient noise to disturb or interfere with public tranquility or to annoy any person, between the hours of 11 p.m. and 6 a.m.

However, the Government will consider whether any further extension of these restrictions in the manner suggested by the honourable Member is desirable.

Stamp duty on conveyances for property sales

8. MR Q. W. LEE asked: —

As it is now five years since stamp duty for conveyances on sales of properties was amended to give concessions to

[MR LEE] **Oral Answers**

attract stamp duty of only \$20 for properties of \$20,000 or below and only 1% between \$20,000 and \$40,000 as against the standard rate of 2% *ad valorem*, and in view of the fact that property values are now worth much more, will the Government consider raising these concessionary values to a more realistic level of say \$50,000 and \$100,000 respectively so as to attain the original object of encouraging home ownership and give some relief from this kind of Stamp Duty for the cheaper kind of flats?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Yes, Sir, certainly but without commitment and not at this time.

MR LEE: —Sir, may I ask my honourable Friend whether there is any indication in his short answer that there are problems in revising the concessionary stamp duty levels as mentioned in my original question?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, I think there are two difficulties in fact. First, I am, at this stage at any rate, not very clear why this particular concession should be extended to catch the same type of properties simply because the market values of these properties have increased *pari passu* with prices and income levels. Secondly, there is the revenue aspect. The present concession costs us \$4.5 million a year—that was the cost of the concession in the financial year 1971-72. Properties valued at \$20,000 and \$40,000 in 1967 would today fetch say \$30,000 and \$65,000, and even on these figures, which are lower than those quoted by my honourable Friend in the question, the loss to revenue in 1971-72 had these values applied would have been a further \$7 million.

I am afraid I would need to have a much clearer idea than I do at present about our recurrent financial position before being able to decide whether such a concession as proposed should have priority over other possible tax reforms.

Statement

Car parking charges

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —Sir, honourable Members will recall that in the budget speech on 1st March this year I proposed increased charges for the use of Government multi-storey and open air car parks. I also indicated that consideration was being

given to extending the numbers of parking meters as well as the hours of operation of meters and to charge different rates in each area according to demand.

In my speech winding up the budget debate on 29th March I indicated that, in view of the reluctance of honourable Members to accept the case for these new charges, their introduction would be deferred for a month or two to give more time for reflection.

Sir, in the intervening period the Government has conducted a meticulous re-examination of the costs on revenue of each of the six Government multi-storey car parks and this has confirmed that, at present rates of charging, the revenue collected in each of them is far from sufficient to cover costs. In each case annual costs have been calculated on the basis approved by the Governor in Council in 1966. *First*, annual capital charges to cover land and buildings have been worked out: for land, on the basis of a 13 year lease renewable for a further 12 years, and for buildings, on the basis of historical costs amortized over 25 years. *Secondly*, from these charges are deducted rents from other users of the structures, such as the telephone exchange in Garden Road. *Finally*, to this adjusted figure for capital charges is added annual recurrent charges such as staff costs, maintenance, stores and electricity. Total costs on this basis for all six car parks in the year ending 31st March 1972 came to about \$9,150,000, while revenue for the usage of these car parks totalled about \$6,450,000. There was thus an overall deficit of about \$2,700,000 in that year chargeable to the general taxpayer. Breaking down these figures into costs and revenue per parking space per month in each of the six car parks produces the following monthly losses per space:

Star Ferry, Garden Road	Average for Hong Kong
and Rumsey St. each ... \$ 54	Island of \$60.00 per space
City Hall \$124	per month.
Middle Road \$ 58	Average for Kowloon of
Yau Ma Tei \$ 85	\$66.50 per space per month.

The overall loss per space per month works out at \$62.50.

This means that to cover actual costs of these car parks total revenue would need to be increased by about 42% above current levels. The new rates I suggested in my budget speech would, on the basis of no change in current usage, increase revenue by rather more than 50%. But, if there were some deterrence, the increase would be somewhat less.

The Governor in Council has now made the necessary regulations to implement the budget proposals and the Road Traffic (Parking and Waiting) (Amendment) Regulations 1972 provide for the new rates of

[THE FINANCIAL SECRETARY] **Statement**

charging to come into force from the 1st July next: monthly tickets are to be increased from \$120 to \$200; the full hourly rate is to be increased from 60 cents to \$1 with a minimum charge of \$2 instead of \$1.50; and the hourly rate in off-peak periods is to be increased from 40 cents to 50 cents, with the minimum charge remaining at \$1. As a consequence of these increased charges, charges for open air car parks are to be increased from \$1.50 to \$2.50 per half day and the Road Traffic (Temporary Car Parks) Regulations have been appropriately amended.

Now as regards parking meters: as I indicated in the budget speech, Sir, there are at present 7,000 metered spaces as compared with 18,000 free on-street parking spaces. With the continuing increase in the volume of traffic, the number of spaces available for parking on street is bound to be reduced and the policy is gradually to extend meter charging to all those remaining; and meters may also be installed to regulate parking in some of the more built up areas in the New Territories. In addition, new meters will be installed in areas where the demand for parking is clearly exceptionally high and the existing meters so displaced will be moved to other areas being metered for the first time. All this will take some months to achieve but, eventually, there will be a hierarchy of charges for metered spaces depending on demand. Over and above this, as from 1st July a start will be made to extend meter charging to midnight and to include Sundays and public holidays. The reason for this is that the demand for parking in many areas is very often just as high, or even higher, during these periods as during daylight hours on weekdays. The Road Traffic (Parking and Waiting) (Amendment) Regulations 1972, to which I have just referred, give effect to these new charges and extended hours of operation.

Sir, the role which parking charges should ultimately play in a policy seeking to optimize the use of road space seems to me at least to be inevitable for, despite our vast road reconstruction and development programme, road space will always be a scarce resource; and it is surely significant that parking charges are used as a weapon in the armoury of traffic control in most, if not all, large cities with traffic problems. Meanwhile, as the present charges in Hong Kong do not even recover historical costs and recurrent expenses, I am sure there will be agreement that the general taxpayer should not be required to continue to subsidize car owners in this way.

MR CHEUNG: —Sir, could my Friend elucidate what he meant by amortizing building costs on a historical basis? Does he mean the actual building costs that were incurred in building the car parks or some other notional costs?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —No, Sir, we simply seek to recover the original investment.

MR CHEUNG: —Has my Friend made any calculations to show what the difference in the Government loss, or the taxpayers loss, would be if the lease and the buildings had been amortized over 50 years instead of 25 years?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —No, Sir, because we consider 25 years to be a perfectly reasonable amortization period to take and indeed is essentially non-commercial.

DR CHUNG: —Sir, may I ask my honourable Friend what is the percentage of the land cost in the total cost of \$9 million per year?

THE FINANCIAL SECRETARY (MR HADDON-CAVE): —It is a bit difficult to work out the percentage, Sir, off hand, but it is \$5.2 million out of a total of \$9.2 million.

DR CHUNG: —Sir, with such a high percentage of land cost, the unit cost per parking space in car parks such as that in the Star Ferry concourse on the Hong Kong Island will be very much higher than that in car parks such as the one in Yau Ma Tei with the 8-storey construction. Would it be fair to have a uniform rate of parking charges for all car parks in Hong Kong?

HIS EXCELLENCY THE PRESIDENT: —Dr CHUNG, I would remind you that questions are only permitted on a statement to elucidate. I think your question goes a little bit further.

Government business

Motions

CORONERS ORDINANCE

THE ATTORNEY GENERAL (MR ROBERTS) moved the following motion: —

It is hereby resolved that the Coroners (Witnesses' Allowances) (Amendment) Rules 1972, made by the Chief Justice on the 18th May 1972, be approved.

He said: —Sir, the Coroners (Witnesses' Allowances) Rules, which were made last year, provide for a scale of allowances to be paid to witnesses giving evidence at inquiries before coroners.

[THE ATTORNEY GENERAL] **Coroners Ordinance**

The object of these amending rules is to oblige a witness to claim his allowance within three months of the date on which he becomes entitled to it. At present, lists of those witnesses who are eligible and the sums due to them must be kept for five years and it is felt that the shorter period provided by the amending rules is more than adequate.

The approval of this Council to the rules is required by section 22A of the Coroners Ordinance.

Question put and agreed to.

CRIMINAL PROCEDURE ORDINANCE

THE ATTORNEY GENERAL (MR ROBERTS) moved the following motion: —

It is hereby resolved that the Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 1972, made by the Chief Justice on the 18th May 1972, be approved.

He said: —Sir, the Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 1972 make the same provision with regard to the claiming of allowances by witnesses in criminal cases as is made by the Coroners (Witnesses' Allowances) (Amendment) Rules 1972, which have just been approved. The approval of this Council to these rules is required by section 9B of the Criminal Procedure Ordinance.

Question put and agreed to.

PUBLIC TRANSPORT SERVICES (HONG KONG ISLAND) ORDINANCE

THE FINANCIAL SECRETARY (MR HADDON-CAVE) moved the following motion: —

It is hereby resolved that no royalty shall be paid by the China Motor Bus Company Limited for the yearly period beginning on the 1st July 1971 and ending on the 30th June 1972.

He said: —Sir, the first resolution standing in my name on the Order Paper is proposed under subsection (3) of section 8 of the Public Transport Services (Hong Kong Island) Ordinance. Its purpose is to set the rate of royalty payable by the China Motor Bus Company for the company's year ending 30th June 1972 at nil. In the absence

of such a resolution the Company would be required to pay royalty at the rate prescribed in subsection (1) of section 8, that is to say at 46% of net profits.

Honourable Members will recall that the rate of royalty payable by the China Motor Bus Company has twice been varied from the statutory rate of 46% of net profits. For the Company's financial year 1969-70 the rate was reduced to 20% and for 1970-71 to nil.

In the case of the Kowloon Motor Bus Company (whose financial year ends in February), the rate of royalty payable has been varied three times from the statutory rate of 20% of gross receipts. For the Company's financial year 1969-70 the rate was reduced to 15% of gross receipts and for 1970-71 and 1971-72 to nil. Despite the fact that royalty payable by KMB was set at nil, fares have had to be increased twice in recent years to stabilize the Company's financial position: from 1st July 1970 a flat fare of 20 cents was introduced throughout the Company's urban area; and from 30th September 1971 a flat fare of 30 cents was introduced on most urban routes.

Sir, the current financial position of the China Motor Bus Company can only be described as no better than that of KMB before the recent fare revision—and all the indications are that it will continue to deteriorate. The level of profitability dropped from around 10% of assets employed in respect of the Company's 1969-70 financial year to a disappointingly low return of 1.2% on assets employed in respect of the Company's 1970-71 financial year. It is estimated that, even with the rate of royalty set at nil, the return on assets employed for the Company's 1971-72 financial year will fall even further to around 0.7%.

There are several reasons for this: in the first place, operating costs have been steadily increasing. Despite the introduction of one-man-operated buses, the Company's wage bill has risen because wage rates have been rising for drivers, conductors and maintenance staff. Despite the Company's efforts to introduce double-decker buses to suburban routes, in order to cut down the operating cost per passenger, the cost of fuel, spare parts and overheads has also been rising. Fares, on the other hand, have remained static for 26 years. Not surprisingly, the Company's profitability has been seriously affected.

Secondly, the Company's unsatisfactory financial position would have been mitigated had the number of passengers increased for this would have increased operating revenue and spread out operating costs over a larger number of passengers.

However, this has not been the case and this leads me on to the third reason for the poor state of the Company's finances: the number of passengers carried by CMB in 1970-71 was 180.6 million as against

[THE FINANCIAL SECRETARY] **Public Transport Services (Hong Kong Island)
Ordinance**

199.4 million in 1969-70. This represents a reduction of 18.8 million or 9.4%. In 1971-72 the number of passengers is expected to be about 177.1 million. This means that not only has total revenue fallen as the result of the fall in the number of passengers, but the cost of operation per passenger has also increased for the same reason.

The Company once had an exclusive franchise over the area of its operations—and I quote from the Ordinance—

"to transport persons in public omnibuses and in public cars on roads in Hong Kong Island".

This exclusive franchise, however, ceased to exist with the regularization of public light buses in September 1969. In the following year, the Company was particularly hard hit because the number of public light buses operating on the Island increased from 105 to 863 or by eight times. This, of course, was the major reason for the fall in the number of passenger carried on CMB buses. Furthermore, with the development of housing estates in Chai Wan, Wah Fu and Aberdeen, the Company has had to provide additional suburban services which have, by and large, not been profitable.

Sir, the Government has not been unmindful of the Company's difficulties which I have just explained. Three steps have been taken so far to ameliorate the position. In the first place, when the Company's financial position first revealed symptoms of deterioration, this Council was immediately invited to reduce and then eliminate the payment of royalty.

Secondly, in February this year, a bill was passed to amend the Public Transport Services (Hong Kong Island) Ordinance as a result of which certain concessions extended to members of the armed forces and Government uniformed personnel travelling on CMB's buses were abolished.

Thirdly, in a statement in this Council on 18th June 1969, my honourable Friend, the Attorney General recognized that Government had a moral obligation to compensate the two enfranchised bus companies for any losses they suffered as a result of the breach of their franchises arising from the regularization of public light buses. On 18th August 1971 the Finance Committee of this Council approved the offer of a payment of \$5.2 million before tax as compensation for the Kowloon Motor Bus Company in respect of the financial year 1970-71, the first full year of operation of public light buses. The payment of compensation was approved by the Finance Committee on a once-for-all basis. A similar submission to the Finance Committee in respect of the

China Motor Bus Company will be made later this afternoon. It is proposed to pay the Company, on a once-for-all basis, a sum of \$4.329 million before tax as compensation for losses sustained by the Company as a result of the breach of its franchise arising from the regularization of public light buses in respect of the financial year 1970-71, that is to say the year to which I have just referred, the year in which the number of passengers carried by CMB fell by nearly 19 million.

Nevertheless, these three measures together can only be regarded as piecemeal and short term remedies to the financial position of the China Motor Bus Company. The only long term solution lies in revising the present fares to a realistic level. Accordingly, the Company has put forward certain proposed variations to its schedule of fares. These were examined and have been recommended by the Transport Advisory Committee, and they have now been approved by the Governor in Council. They are to come into effect on 1st July next and full details will be published in the Official *Gazette* this Friday.

The variations involve dividing the Company's routes into three broad groups, namely:

- lower level routes
- hill climbing routes and
- suburban routes

As from 1st July 1972, the full fare on the *lower level routes*, that is to say, the main waterfront routes, will remain at 20 cents, but the section fare of 10 cents will be eliminated so that a flat 20 cent fare will apply. As regards *hill climbing routes*: on four routes the full fare will remain at 30 cents, but the section fares of 10, 20 and 25 cents will be eliminated so that a flat 30 cent fare will apply. On five routes, the full fare will be raised from 20 and 25 cents to 30 cents and the section fares of 10 and 20 cents will be eliminated. In other words, a flat 30 cent fare will apply on all these routes. On the remaining hill climbing route (Route 21) the present flat fare will be raised from 10 to 20 cents. On *suburban routes*, full fares on three routes will be increased by 10 cents. Section fares will be retained but with some upward adjustments.

Now as regards the rationale of these variations: the flat fare of 20 cents on the lower level routes, which compete directly with Hong Kong Tramways, will coincide with an increase from 10 cents to 30 cents on the lower decks of trams. Thus there will be no encouragement to passengers to switch from CMB to the Tramways or *vice versa* on these routes. As regards the hill climbing routes, the introduction of a flat fare of 30 or 20 cents, comparable with KMB's flat fares, will facilitate the introduction of further one-man-operated buses. This

[THE FINANCIAL SECRETARY] **Public Transport Services (Hong Kong Island)
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will reduce operating costs. As regards the suburban routes, the fares are to be increased in order to reflect more realistically operating costs on these routes, which are, on the whole, not at present profitable.

There are three other concessions not provided for by law, but solely within the gift of the Company, which means that they can be withdrawn by the Company at any time. These are: *first*, adult monthly tickets, now available at \$18 each (and used by about 10,000 travellers a month); *secondly*, student monthly tickets, which enable students under 18 living in the urban area to make up to four trips a day throughout the year, other than on Sundays and public holidays. These tickets are now available at \$6 a month and are at present used by about 22,000 students; *thirdly*, a concession extended to about 8,700 students under 18 years of age in the suburban districts enabling them to travel at half fare.

As in the case of KMB, Government is convinced that CMB can no longer afford to extend these concessions. They are, therefore, to be abolished with effect from 1st July 1972. But children under the age of 12 will continue to be charged half fares and children under the age of four and accompanied by adults will continue to be carried free.

However, again as in the case of KMB, the Company has agreed to retain the student monthly ticket for travel in the urban area and the half fare concession on suburban routes in a modified form for 10 months of the year. The cost of a monthly ticket will be increased from \$6 to \$18. But as I said when announcing the new monthly student ticket scheme for KMB last year, the Government recognizes that parents should not be asked to bear the whole of this burden and considers that some help should be provided towards the cost of travelling to and from school. I said that assistance towards this cost may be regarded as part and parcel of Government's general policy of assistance towards the cost of education. Accordingly, subject to the approval of the Finance Committee, it is proposed that the cost per ticket to the parents should be increased from \$6 to \$9 and the remaining \$9 should be paid by Government to the Company in the form of a subsidy to the student. The cost of this scheme will be about \$2 million a year and the reimbursement to the Company of the second half of fares used by students on suburban routes will cost another \$800,000.

Turning now, Sir, to the estimated effect on the revenue of the Company of the fare revision and the partial elimination of concessionary fares: if no passengers were deterred by the proposed fare increases, the Company's revenue from this source would increase by

some \$7 million in a full year, that is from \$32 million to \$39 million. However, there will clearly be some deterrence. In the urban area of Kowloon the increase of 50% in KMB's fares in October 1971 reduced demand by between 10 and 15%. The smaller average fare increase by CMB may be expected to have a smaller average deterrent effect and a reduction of some 8% in demand has been assumed. For the purposes of our calculation this would cut back the increased revenue expected by some \$3 million, leaving a net increase in revenue of approximately \$4 million. It is expected that the abolition of statutory concessions and adult monthly tickets, together with the revised scheme of student monthly tickets, will result in the Company receiving additional revenue amounting to another \$4 million.

Accordingly, whereas with the present fare structure and concessionary fares, the Company anticipates a net loss of \$2.325 million in the year 1972-73, with the charges proposed the Company will earn a profit of about \$4.8 million after tax, yielding a return of about 14% on assets employed. This calculation could, however, be subject to a significant margin of error because it is not known how passengers will react to the fare increases proposed. Nor is it known to what extent costs, particularly wages, will increase further during the coming year.

To sum up, Sir, the Government is of the view that five measures need to be taken to rectify the financial position of the China Motor Bus Company in order that an adequate, efficient and viable bus service can continue to operate on Hong Kong Island: *first*, the rate of royalty payable by the Company should be set at nil for its financial year 1971-72. This is the subject of the present motion before this Council. *Secondly*, the Finance Committee is to be asked to approve later this afternoon the payment to the Company, on a once-for-all basis, of \$4.329 million before tax by way of compensation for losses arising from the regularization of public light buses. *Thirdly*, the Governor in Council has approved a revision of the fare structure involving

- (a) a flat 20 cent fare for the Company's lower level routes with the elimination of the 10 cent section fare;
- (b) flat fares of 20 cents or 30 cents on the Company's hill climbing routes and the elimination of section fares;
- (c) an upward revision of the full fare on three of the Company's suburban routes and the retention of section fares on all these routes, but with upward adjustments.

Fourthly, the Company has decided to abolish adult monthly tickets. *Finally*, concessionary fares for students are to be retained, but in a modified form and partly at public expense.

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MR SZETO: —Sir, the fact that the financial position of the China Motor Bus Company has deteriorated in recent years due to rising operating costs is a common knowledge, and has been frequently made known by the Company. It is surprising therefore that a revision of its fares has not taken place earlier in the light of what had happened to its counterpart on the Mainland, the Kowloon Motor Bus Company, which had been allowed to revise its fares twice in 15 months. It is realized that the China Motor Bus Company has been able to hold out so much longer because the circumstances under which it operated have been less difficult and straining in comparison with those of KMB's. Although my honourable Friend, the Financial Secretary, has spoken of the CMB's extended commitments in recent years to serve new housing estates in the suburban areas on the Island, the expansion of its services needed to meet increased demand due to expanded franchise area and population is of a much lesser magnitude than that required of KMB, a subject on which I have spoken in this Council on previous occasions. Nevertheless, CMB, being a labour-intensive transport industry, cannot escape the considerable stress resulting from increasing wages and costs and has now reached its ultimate strain, and an increase in fares is inevitable if it is to remain viable which a public transport undertaking must.

My honourable Friend has summed up the three measures to rectify CMB's ailing finances in order that an adequate, efficient and viable bus service can continue to operate on the Island. Of these three measures, two have the support of the Transport Advisory Committee: the first concerns royalty which the Committee considered, in the context of Hong Kong, an indirect tax on the poorer section of the community who have to rely on public transport and should therefore be abolished unless it is used as a regulator of excessive profits which is not possible under the present fare structure.

Sir, in order to save the Company from its deteriorating financial position and to make public transport operation viable, the Committee endorsed the present proposal of fare revision after careful study. From revenue and costing data available to it, the Committee estimated that the new fares would enable the Company, if operated efficiently, to gain a return of from 14%-18% on assets employed depending on the accuracy of its profit and loss forecasts and on the deterrent effect of the fare increase. The Transport Department estimates this to be 8% reduction in passengers, but it is possible that this may turn out to be lower as it is likely that some of the present 3rd class tram passengers would switch to buses for quicker travel at the same fare. It is for this reason that the Transport Advisory Committee's endorsement of the fare increase as now proposed was made on the condition

that the level of royalty be considered in the light of the accuracy of the Company's profit and loss forecasts when compared with its audited accounts for each year in question. In other words, Sir, royalty should be retained as a regulator in the event of excessive profits.

Sir, as regards compensation to CMB as a result of the regularization of public light buses, as in the case of the KMB, the Transport Advisory Committee was not consulted. My honourable Friend spoke of a moral obligation on the part of Government and said that the Company once had an exclusive franchise over the area of its operations and quoted a passage from section 3 of the Ordinance to the effect that the Company is required

“ . . . to transport persons in public omnibuses and in public cars on roads in Hong Kong Island . . . ”

He further said that this exclusive franchise ceased to exist with the regularization of public light buses in September 1969.

Honourable Members no doubt are aware that for this same exclusive franchise the Company is required by the Ordinance to provide an adequate and efficient service under section 13 which reads:

"The Company shall provide and maintain throughout the term of the grant or any extension thereof to the satisfaction of the Authority adequate and efficient services of public passenger transport vehicles for the transport of passengers on roads on Hong Kong Island . . . ”

Sir, the questions now are:

- (a) could CMB's services be described as adequate and efficient before September 1969; and
- (b) would CMB's services today be considered adequate and efficient notwithstanding the fact that the public light buses are helping it to carry a daily number of passengers which almost equals 80% of its own?

It is therefore my contention, Sir, that the public light buses as well as their predecessors, the illegal mini-buses before September 1969, were created as a result of inadequate and inefficient public transport services which existed before that date. Franchise obligations are meant to be observed by Government on one hand and the Company on the other, and failure on either party must be clearly recognized. Certainly, there has been loss of bus trips and passengers due to worsening traffic congestion in recent years and increasing affluence of the public which prompted the swing to private travel of one form or other—by private cars, taxis, pak-pais and public light buses—and to base compensation wholly on the loss of passengers that the Company would otherwise

[MR SZETO] **Public Transport Services (Hong Kong Island) Ordinance**

have carried had it not been for the regularization of public light buses is to me both illogical and unjustified.

Further, I cannot see the validity of a moral obligation on the part of Government, because it is clearly provided in clause 29 of the Ordinance that the Governor in Council, after having been satisfied that the services provided by the Company had failed to comply with the provisions in the Ordinance, may make such arrangements with any other person for the operation of an efficient service on all or any of the routes in the Company's franchise area without any compensation.

Sir, with the present trend of rising costs, bus users on the Island, I am sure, would not grudge the Company being granted a reasonable and modest fare increase in order to make bus operation viable. But the important watch words are "adequate and efficient services". If advisory committees cannot effectively obtain from a bus operator his co-operation, as in the case of the KMB, in their effort to improve the operator's organization and services, other more effective and mandatory means have to be taken. The Commissioner for Transport should be empowered and required to exercise closer supervision than there was hitherto on bus companies' organization, their operation, their bus scheduling, and their maintenance services to ensure safety of their passengers and the public and the training and discipline of their bus crews. Above all, Government must make it obligatory for bus companies to produce for the examination and approval of Government their annual programmes of service expansion and replacement of old buses and all other matters relevant to their organizations as provided in their respective Ordinances.

SIR YUET-KEUNG KAN: —Sir, I agree with my honourable Friend Mr SZETO over this question of compensation. I think this Council has heard various views expressed earlier on. I was not in Hong Kong, I believe, when Finance Committee approved the compensation which was to be paid to the Kowloon Motor Bus Company but I think, Sir, in fairness to the China Motor Bus Company, this much, I think I am correct in saying, should be placed on record: unlike the Kowloon Motor Bus Company—unlike Kowloon where in fact there were a large number of mini-buses running in Kowloon before 1969, on the Island there were in fact none or very few indeed mini-buses running. These mini-buses only appeared on the Island as a result of the disturbances in 1967. So to that extent I think it would be fair to say that the appearance of mini-buses on the Island could not be attributed to what I would call inadequate or inefficient services on the part of the China Motor Bus Company. This is not to say, Sir, that I disagree

with my honourable Friend Mr SZETO. I agree with him that there is much in the bus services on the Island that requires a great deal of improvement.

THE ATTORNEY GENERAL (MR ROBERTS): — Sir, I would like, as the undertaking which was given 3 years ago was given by me, to explain briefly why it was given and its relevance to the present situation for honourable Members.

The two motor bus Ordinances provided for exclusive franchises to be granted to each of the bus companies. That is to say, they and they alone were given the right to provide bus services within a given area. The Ordinances also provided for alternative arrangements to be made by the Governor in Council, if the Governor in Council had taken a positive view that the service provided by one of the bus companies was unsatisfactory. This course was never in fact followed. What happened instead was that a very large number of mini-buses were licensed by the Government. The effect of this licensing was to amount to a breach of the franchise which the Ordinance had granted to the bus company. Had such a breach been committed by a private person he would have been liable to pay heavy damages to the bus company, and it was therefore my advice, which was accepted by the Government at the time, that the Government should not in this respect be in a better position than a private person breaking a contract in this way would have been. It was therefore upon that basis that the Government accepted that there was a moral obligation to compensate the two bus companies for what it had done.

THE FINANCIAL SECRETARY (MR HADDON-CAVE): — Sir, I should like to make it quite clear that the resolution presently before this Council only reduces the rate of royalty payable by the Company to nil for the Company's financial year ending the 30th June 1972. The rate of royalty payable in future years would entirely depend on the view taken as to the Company's financial position in those years. I certainly do see royalty as a regulator and I have an open mind on the question of how any future royalty proceeds should be utilized.

As regards compensation for the effects on the Company's operations of the regularization of public light buses, I should like to add to what my honourable Friend the Attorney General has said by saying that this is a question, of course, which has been debated at length in connection with the Kowloon Motor Bus Company, and the Finance Committee of this Council has approved a payment to that Company. In the Government's view CMB should be accorded similar treatment on comparable terms.

[THE FINANCIAL SECRETARY] **Public Transport Services (Hong Kong Island) Ordinance**

Finally, Sir, as regards my honourable Friend's concern about Government control and supervision of the management of the operation of bus companies, I can assure him that we are equally concerned that the companies should perform adequately in terms of their franchise obligations. We have invested a great deal of effort in recent years to this end and the present Commissioner for Transport certainly regards this as one of the most urgent tasks he has on hand.

Question put and agreed to.

TRAMWAY ORDINANCE

THE FINANCIAL SECRETARY (MR HADDON-CAVE) moved the following motion: —

It is hereby resolved that no royalty shall be paid by Hong Kong Tramways Limited for the calendar year commencing on the 1st January 1972.

He said: —Sir, the second resolution standing in my name on the Order Paper is proposed under subsection (3) of section 49 of the Tramway Ordinance as amended in 1971. Its purpose is to set the rate of royalty payable by the Hong Kong Tramways Limited for the Company's year commencing on the 1st January 1972 at nil. In the absence of such a resolution the Company would be required to pay royalty at the rate prescribed in subsection (1) of section 49; in the absence of such a resolution the rate of 23

Honourable Members will recall that the rate of royalty payable by the Tramways was also set at nil last year when the Tramway (Amendment) Ordinance 1971 was passed by this Council last year on 6th October.

In common with the China Motor Bus Company, and the Kowloon Motor Bus Company before its fare revision, the Hong Kong Tramway's current financial position has been deteriorating. After the elimination of royalty, the return on assets employed in 1971 was about 12.7%. But on the same basis, that is with royalty eliminated, the forecast returns for 1972 and 1973 are expected to fall to about 7.1% and 2.7% respectively.

Sir, I have just explained at some length the factors lying behind the deterioration of the financial position of the China Motor Bus Company. The same factors are also operating in the case of the Tramway. In the first place, operating costs have been steadily increasing. This is especially so for wages and spare parts. Secondly,

public light buses, especially since their regularization in 1969, have attracted passengers away from the Tramway. In 1970 the trams carried 158.5 million passengers. In 1971 they carried some two million less. And present indications are that the numbers are still falling, due not only to competition from public light buses operating along the same routes, but also to the slowing down of the tram service as a result of traffic congestion at peak hours. At present levels of fares this falling off in numbers of passengers can only mean a steadily declining revenue for the Tramway in the face, as I have said, of steadily increasing costs. As a result profits will continue to fall until, before very long, the Tramway operation will begin to run into the red.

In these circumstances, it is clear that measures must be taken to improve the Company's financial position if it is to continue to perform efficiently its proper role in the overall public transport system on Hong Kong Island.

Sir, as in the case of the two bus companies, Government has already taken certain specific steps to help improve the Tramway Company's financial position. *First*, the payment of royalty for the year 1971 was eliminated. And the present resolution also proposes a nil royalty for 1972. *Secondly*, the Tramway (Amendment) Ordinance 1972, which was passed by this Council on 9th February 1972, abolished certain statutory concessions formerly extended to members of the armed forces and Government uniformed personnel travelling on trams.

However, unlike the two bus companies, the Tramway do not enjoy an exclusive franchise so the Company cannot be helped by receiving compensation for any breach of franchise arising from the regularization of public light buses, despite the fact that it faces keen competition from them. It is, I think, clear from what I have said already that the two measures which I have just indicated — the elimination of royalty and the abolition of statutory concessions—will not be sufficient to prevent a further deterioration of the Company's financial position. The pincers of rising cost and falling revenue can only be prised open by a general fare adjustment.

Both the Government and the Transport Advisory Committee have given very careful consideration to the Company's request for a fare revision, a request which was first submitted more than a year ago. Various courses have been examined in the light of their possible consequences for passengers as well as for the Company's finances. These included:

First, the retention of the present two-class fare structure, but by increasing each level by 10 cents (in other words to 30 cents first class and 20 cents second).

[THE FINANCIAL SECRETARY] **Tramway Ordinance**

Secondly, the retention of the present two-class fare structure, but by increasing both classes by 5 cents only to 25 cents and 15 cents respectively.

Thirdly, the abolition of the two-class fare structure and the introduction of a flat 20¢ fare.

The first course was felt to be inappropriate, because it would almost certainly lead to the loss of too many passengers to the buses charging only 20 cents on competing routes and would thus defeat its own object.

The second course would also lead to the loss of some first class passengers to the buses. But it would, in addition, be most inconvenient from the point of view of fare collection and would probably not yield sufficient additional revenue to avoid another request for a fare revision within a very short time.

The only viable course, therefore, seemed to be the addition of the present two-class fare structure by introducing a single 20 cent flat fare. On top of the increased revenue this would bring in, it would have the additional merit of increasing operational efficiency and flexibility. Furthermore, the social attitudes that led to the establishment of a two class fare structure on the Tramway as long ago as 1911 are obviously outdated. Such a system has never operated on the buses and has, as far as I know, led to no complaint. In any case, a ride on the trams at 20 cents will be a very good bargain at today's prices.

It is for these reasons, that the Transport Advisory Committee recommended, and the Governor in Council has now approved, the Company's proposal to introduce a flat 20 cent fare with effect from 1st July 1972; and I shall later on this afternoon be moving the second reading of a bill to bring this into effect by amending the Tramway Ordinance.

The Company also intends to abolish a non-statutory concession which provides for all students over the age of 12 to travel for 10 cents. However, in line with similar concessions which have already been introduced for students travelling on KMB buses and which I have just mentioned in connection with those travelling on CMB buses, it is proposed to continue this concession and for the second half of the fare to be made up from public funds. The Finance Committee will be invited to approve the necessary funds in the near future. I expect the cost of this will be somewhere in the order of \$700,000 per annum.

Finally, Sir, I shall attempt to describe how all these changes are likely to affect the financial position of the Company. Assuming that

the present resolution is accepted by honourable Members and that the rate of royalty is therefore set at nil, it is estimated that the income from the Tramway operation will be \$22 million in 1972, \$25.4 million in 1973 and about the same in 1974. This will enable the Company to make a return on its assets employed of somewhat over 11% in 1972, and of about 16½% in 1973 and 12½% in 1974. These figures, taken one with another, are I believe modest. They certainly do not indicate any tremendous increase in profitability for the Tramway as a result of the proposed changes, which are I believe appropriate to the situation and no more. I hope that they will be understood and accepted as such by the public at large.

MR SZETO: —Sir, the motion to treat Hong Kong's oldest public transport undertaking on the same footing with the two bus companies will receive general support if only on the ground of equity and for nothing else. Royalty is incompatible in these days of rising operating costs with fares having remained unchanged for 26 years: while statutory concessions to members of the armed forces and Government uniformed personnel must be considered anachronistic as a present day Government policy.

Sir, our own critics have often condemned our tram-cars as outdated, slow and obstructive, without realizing that they had done and are still doing a great service to the community in moving large numbers of people daily from one end of the Island to another. An old-fashioned mode of transport, perhaps, but their effectiveness has been proved for a greater part of a century. Even under present day heavy transport demand and traffic congestion their satisfactory performance should be judged in terms of their economic road use. Today, the tramcars carry almost one third of our public transport passengers on the Island, and to eliminate them at this moment requires doubling the Island's franchised bus capacities and would inevitably create many problems including that of providing sufficient kerb spaces for bus stops particularly in Central District. The role played by the tramcars in our existing public transport system must therefore be recognized and it is essential to make their operation commercially viable before we have a better alternative such as a mass transit.

Sir, the present proposal to abolish the two class fare structure and to introduce a flat fare of 20 cents is reasonable and modest, and should not cause any hardship in present day economy, because for years the lower deck tram fare must have been one of the cheapest in the world if not the world's cheapest. In my view, to remove class distinction in tramway travel is sensible not only for simplicity of fare structure but also for sociological reasons. To maintain class distinction in a tramcar of 29 feet long, 14 feet 9 inches high and 6 feet 6 inches wide must be considered anachronistic in the context of today's social attitude.

[MR SZETO] **Tramway Ordinance**

The amenities of upper deck travel will be opened to all passengers on a flat fare basis.

My honourable Friend has mentioned that the proposed fare adjustment and the abolition of royalty and concessions are the minimum measures necessary to keep the Tramway Company's head above water. However, the deterrent effect on the Company of equalizing tramway fares with those of CMB buses on the competitive routes cannot be overlooked. To guard against an undue swing, I presume the Tramway Company will have to introduce improvement to the seating arrangement and other amenities on the lower deck. In this connection it may be desirable to amend the rather outdated provisions in section 47 of the Ordinance which would require the Tramway to be used for the purpose of conveying passengers, animals, goods, merchandise, commodities, minerals or parcels.

Sir, I support the motion.

THE FINANCIAL SECRETARY (MR HADDON-CAVE): — Sir, we shall give consideration to section 47. It's true, as my honourable Friend has said, it has a faintly historical ring about it. I would also like to thank him for his support of this motion; but I feel I must make one comment on his earlier reference to the lower deck. No standing room is allowed on trams downstairs—I beg your pardon—no standing room is allowed upstairs on trams . . . (*laughter*) . . . but it is allowed downstairs, and I do not think myself that standing downstairs should be prohibited or indeed even limited, after all it is allowed on buses. The number of seats available on each tram is 51 and there is standing room for up to 49. Given the role of trams in our public transport system on the Island, it would seem to me undesirable to reduce their carrying capacity. I understand that the company intends to re-arrange entrances to facilitate access to the lower and upper decks, but there are no plans, as far as I know, to re-arrange seats. Indeed I am advised that this would not be possible for constructional reasons connected with the design of the tram chassis.

Question put and agreed to.

CROSS-HARBOUR TUNNEL ORDINANCE

THE FINANCIAL SECRETARY (MR HADDON-CAVE) moved the following motion: —

It is hereby resolved that the Cross-Harbour Tunnel By-laws 1972, made by the Cross-Harbour Tunnel Company Limited on the 1st June 1972, be approved.

He said: —Sir, the third resolution standing in my name on the Order Paper is proposed under subsection (2) of section 62 of the Cross Harbour Tunnel Ordinance. Its purpose is to seek the approval of this Council for the Cross Harbour Tunnel By-laws 1972 which have been drawn up by the Cross Harbour Tunnel Company Limited, and examined by the Legal Department and other interested Government departments.

These by-laws generally seek to regulate the manner and behaviour of drivers who will be using the Cross Harbour Tunnel. They also define the powers of tunnel officers in the event of a contravention of the by-laws or of an accident in the tunnel area.

For instance, by-law 8 limits the speed of vehicles in the tunnel to a maximum of 40 m.p.h., by-law 9 prohibits drivers from changing lanes in the tunnel unless authorized to do so by a traffic signal or a tunnel officer, and by-law 13 requires slow moving vehicles to use the left hand lanes. Under by-laws 19 to 21 certain vehicles such as bicycles, those driven by learner drivers and unroadworthy vehicles are prohibited from using the tunnel, while by-law 16 provides for the towing away or removal of vehicles which are causing an obstruction.

Honourable Members might also wish to note that by-law 4 confers exemption from the requirements of certain by-laws to certain public service vehicles, such as fire engines, ambulances and police vehicles.

DR CHUNG: —Your Excellency, my maiden speech in this Council was made in 1965 during a debate on the cross-harbour tunnel and I am therefore naturally glad to see that after seven years the cross-harbour tunnel will soon be completed and open to traffic. In rising to support the motion moved by my honourable Friend the Financial Secretary I have a few minor comments on these by-laws.

The first one concerns by-law 14 on general restrictions. Under this by-law, no person in the tunnel area shall, except on the direction of a tunnel officer, change a wheel or tyre on a vehicle. I think this particular section of by-law 14 is too restrictive and not practical. When a driver of a car discovers that his car suddenly has a flat tyre inside the tunnel area, say right in the middle of the harbour, according to this by-law the driver has to seek prior permission from a tunnel officer, probably at the terminal building located half a mile away, before he can change his flat tyre. I am sure that this requirement of obtaining prior permission from a tunnel officer for a driver to change his flat tyre will cause unnecessary obstruction to the tunnel traffic.

My second comment is on by-law 13 dealing with traffic confined to left-hand lanes. This by-law only restricts a goods vehicle exceeding

[DR CHUNG] **Cross-Harbour Tunnel Ordinance**

two tons to travel along the left-hand lanes. I feel that all goods vehicles irrespective of their sizes and capacity like omnibuses should be confined to the left-hand lanes only.

My third and last comment is concerned with by-law 16. Under paragraph 3 of this by-law, a list of the charges fixed by the Tunnel Company for a number of services such as towage or removal as well as storage and detention of a vehicle *may* be published by the Company in such a manner as it thinks fit. I think this is rather unsatisfactory and suggest that this paragraph 3 be amended to a more positive manner so that the Tunnel Company *must* publish a list of charges for such services.

With these remarks, Sir, I support the motion before Council.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, the honourable Member's first suggestion must, I think, be considered carefully because one has to remember that, if a driver is attempting to change a wheel of a vehicle which has broken down or stopped inside the tunnel, there is a grave danger that he will block the passage of other vehicles through it. No doubt the normal practice will be for somebody who breaks down to inform the Company which will then arrange for the broken down vehicle to be towed out of the tunnel as quickly as possible so that it can be dealt with where it causes no obstruction.

With regard to by-law 13 about confining traffic to left-hand lanes, it is certainly restricted at the moment only to very large goods vehicles, but the Government would certainly be pleased to discuss with the Company whether this present restriction should be lowered to include rather smaller goods vehicles.

So far as the scale of charges is concerned, I do see advantages in the honourable Member's suggestion that the charges should be published and made available for members of the public to know. What I would suggest is that honourable Members should approve these by-laws in their present form on an undertaking that these various matters will be taken up with the Company. Of course, the by-laws are needed soon because the Tunnel Company hopes to operate next month.

Question put and agreed to.

First reading**EVIDENCE (AMENDMENT) BILL 1972****INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1972****JUDICIAL PROCEEDINGS (ADJOURNMENT DURING GALE WARNINGS) (AMENDMENT) BILL 1972****PENSIONS (AMENDMENT) BILL 1972****INLAND REVENUE (AMENDMENT) (NO 2) BILL 1972****TRAMWAY (AMENDMENT) (NO 2) BILL 1972**

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order No 41(3).

Second reading**EVIDENCE (AMENDMENT) BILL 1972**

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to amend the Evidence Ordinance."

He said: —Sir, section 23D of the principal Ordinance allows a certificate signed by the Government Chemist as to an article or substance "submitted to him for chemical examination or analysis" to be admitted in evidence without further proof.

The person who actually delivers a scaled sample of a substance to the Chemist is probably not aware that he is submitting it to the Chemist for chemical examination or analysis and therefore he cannot, strictly speaking, state that he delivered the sample to the Chemist for this purpose. As a result of the first amendment to section 23D, it will be sufficient for the person delivering a sample merely to state that he delivered the article to the Government Chemist.

The second amendment to section 23D deletes the word "chemical" from subsection (2) which provides that a document given for the purpose of subsection (1) may be signed by the Government Chemist when any chemical examination or analysis has been made by a person acting under his supervision. Some of the substances which are examined by the Government Chemist are not subjected to a chemical examination or analysis, and therefore the word "chemical" is removed.

The proposed new section 23G, which is contained in clause 3, will enable a document certified by one of the public officers set out in section 23G(1)(b), to be admitted as prima facie evidence in court

[THE ATTORNEY GENERAL] **Evidence (Amendment) Bill—second reading**

proceedings without the officer needing to be called as a witness. The section will enable certificates recording the testing of the accuracy, inspection and servicing of motor vehicle speedometers, radar speed measurement devices and weighing devices to be admitted on this basis.

The new section 23H, also in clause 3, will allow a certificate of the posting of a document or notice to be admitted in evidence without further proof. This will relieve officers who post documents and notices from the duty of attending court to give formal evidence to this effect. Of course, if the substance of a certificate which is tendered in evidence under either of these two new sections is challenged, then the person signing the certificate will have to give oral evidence as to its contents.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

Clause 2 amends section 23D of the principal Ordinance. The purpose of this amendment is to relate the certificate given under the hand of the Government Chemist more closely to the actual procedure followed when an examination or analysis is carried out.

Clause 3 adds new clauses 23G and 23H to the principal Ordinance. Clause 23G provides for the admission of certificates of the accuracy of speedometers and radar and weighing devices as *prima facie* evidence of the matters stated therein. These certificates will be signed by a person authorized by the Director of Public Works, the Commissioner of Police and the Commissioner for Transport, respectively.

Clause 23H provides for the issue of a certificate of posting of specified documents as *prima facie* evidence of the matters stated therein. This provision, read with section 8 of the Interpretation and General Clauses Ordinance (Chapter 1), will provide for the proof of the service of documents in any criminal or civil proceedings by the production of the certificate.

**INTERPRETATION AND GENERAL CLAUSES
(AMENDMENT) BILL 1972**

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to amend the Interpretation and General Clauses Ordinance."

He said: —Sir, by section 8 of the principal Ordinance, a document is deemed to be effectively served if it is posted to the last known postal address of the person to be served in an envelope containing the document or notice.

However, many documents and notices are now not enclosed in separate envelopes and therefore clause 2 amends that section so as to ensure that a document or notice which is not enclosed in an envelope will still be regarded as validly served.

By section 62 of the Ordinance, where the Governor exercises a power or performs a duty, this may be signified by the Colonial Secretary on behalf of the Governor. As the signification is of a routine nature, it is thought that this can be properly carried out by officers in the Colonial Secretariat.

Consequently, clause 3 provides that any of the public officers specified in the Sixth Schedule, which is set out in clause 4, may signify the exercise of a power or the performance of duty by the Governor. I should make it clear that this does not in any way affect the duty of the Governor himself to make the necessary decision.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

Section 8 of the principal Ordinance provides for the service by post of statutory documents and notices. As not all of these documents and notices are enclosed in separate envelopes the opportunity is taken to delete references to envelopes from this section.

2. Section 62 of the principal Ordinance empowers the Colonial Secretary to signify that the Governor has exercised a power or performed a duty conferred or imposed on him by an Ordinance. The amendment contained in clause 3 will continue to confer this power on the Colonial Secretary and will also

Interpretation and General Clauses (Amendment) Bill—second reading

[*Explanatory Memorandum*]

empower any other public officer specified in the Sixth Schedule to so signify.

3. Clause 3 also contains a new subsection (3) which empowers the Governor to amend the Sixth Schedule by notice in the *Gazette*. Clause 4 provides for the addition of the Sixth Schedule.

**JUDICIAL PROCEEDINGS (ADJOURNMENT DURING
GALE WARNINGS) (AMENDMENT) BILL 1972**

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to amend the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance."

He said: —Sir, by virtue of section 3 of the principal Ordinance all judicial proceedings are automatically adjourned if storm warning Signal No 5 or above is raised.

In addition, the Chief Justice may, under section 6 of the Ordinance, by order provide for the adjournment of any judicial proceedings if he thinks this expedient by reason of a tropical cyclone or any circumstances connected with it.

At present, the Chief Justice may order the resumption at any time of judicial proceedings adjourned by him under section 6. But if the judicial proceedings were adjourned automatically under section 3, by reason of the hoisting of a gale warning, then they can only be resumed on the next day after that on which the gale warning is lowered.

However, it is sometimes possible for proceedings to be resumed on the same day as that on which a gale warning ceases and clause 3 therefore replaces section 6 of the Ordinance so as to enable the Chief Justice to order this.

The opportunity has been taken to substitute, by clause 2, which would take effect from 1st January 1973, the new storm warning signals which are due to come into operation on that date.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

The main purpose of this Bill is to enable the Chief Justice to order the resumption of judicial proceedings, whether adjourned by him under section 6 or adjourned by the announcement of a gale warning under section 3.

At present, section 4 provides that proceedings shall be resumed on the next day after the gale warning ceases. The proposed new section 6, as set out in clause 3, will enable the Chief Justice to order the resumption of adjourned proceedings at any other time.

Clause 2 amends the storm warning signals set out in section 5(1)(a), in accordance with the revised system of storm warning signals, which is to be introduced on 1st January 1973.

PENSIONS (AMENDMENT) BILL 1972

THE ATTORNEY GENERAL (MR ROBERTS) moved the second reading of: —"A bill to amend the Pensions Ordinance."

He said: —Sir, by section 5(2) of the Pensions Ordinance, the Governor in Council may withhold or reduce a pension, gratuity or other allowance which is payable to an officer who has been found guilty of negligence, irregularity or misconduct. Clause 2 will empower the Governor, after considering the advice of the Public Services Commission, to exercise this power in future, save in relation to those officers who hold a pensionable office which is outside the jurisdiction of the Public Services Commission by virtue of section 6(2) of the Public Services Commission Ordinance. In the case of the latter officers, who include for example, official Members of Executive Council and police officers, the power will remain in the hands of the Governor in Council.

Similarly, section 8(2) of the Ordinance at present empowers the Governor, after considering the advice of the Public Services Commission, to retire compulsorily a pensionable officer who has reached the age of 45 years. The effect of clause 3 will be to confer this power on the Governor in Council, in the case of an officer who is outside the jurisdiction of the Public Services Commission.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Pensions (Amendment) Bill—second reading*Explanatory Memorandum*

Under section 5(2) of the principal Ordinance the Governor in Council is empowered to withhold or reduce the pension, gratuity or other allowance payable to an officer who has been found guilty of negligence, irregularity or misconduct. The proposed new subsection (2) contained in clause 2 empowers the Governor, after considering the advice of the Public Services Commission to exercise this power subject to the exception contained in the proposed new subsection (3). The proposed subsection (3) reserves this power to the Governor in Council in relation to an officer who holds a pensionable office with respect to which the Public Services Commission is precluded from advising by virtue of section 6(2) of the Public Services Commission Ordinance.

Section 8(2) of the principal Ordinance empowers the Governor after considering the advice of the Public Services Commission to retire compulsorily an officer who has attained the age of 45 years and who holds a pensionable office. The proposed new subsection (3) contained in clause 3 will confer on the Governor in Council the power to retire compulsorily a pensionable officer other than a judge who has attained the age of 45 years and who holds a pensionable office with respect to which the Public Services Commission is precluded from advising by virtue of section 6(2) of the Public Services Commission Ordinance.

INLAND REVENUE (AMENDMENT) (NO 2) BILL 1972

THE FINANCIAL SECRETARY (MR HADDON-CAVE) moved the second reading of: —"A bill to amend the Inland Revenue Ordinance."

He said: —Sir, this bill has three main purposes: to give effect to some of the remaining minor recommendations contained in the Report of the Inland Revenue Ordinance Review Committee; to confirm as a permanent feature of the law certain powers introduced in 1969 on a trial basis to assist in the investigation of tax evasion; and to amend other related provisions to reinforce these powers.

I think I should explain five of the more important provisions of the bill. To begin with *clause 3*: section 24(2) of the Ordinance provides that, where more than half the receipts of a trade association are by way of subscriptions from members who claim or would be entitled to claim that the sums so paid are deductible expenses, the association is deemed to carry on a business and is chargeable to profits tax. Tax is paid on any excess of these receipts over allowable expenditure.

Individual members are entitled to deduction in respect of these subscriptions on the basis that the association's expenditure is representative, and normally in respect of activities which, if carried out by the individual member in his trade, would entitle the member to a deduction for the expenditure. Members of professional and business associations are also allowed deductions for subscriptions to their respective associations on the same basis as members of trade association, but no profits tax charge is at present levied on any excess or receipts over expenditure. The purpose of *clause 3*, therefore, is to place professional and business associations in the same position as trade associations in regard to liability to profits tax.

Secondly, *clause 4*: this clause is to enable the assessor to require information on *any* matter which may affect the liability, responsibility or obligation of any person under the Ordinance. As section 51(4) of the Ordinance at present stands, the assessor may require information only in regard to a *particular* matter and this has proved to be unreasonably restrictive. This amendment is to be for a trial period of three years only in the first instance.

Thirdly, *clause 5 and 6(e)*: when sections 51(A) and 51(B) of the Ordinance were enacted in mid-1969, it was felt at that time that an excessive and arbitrary use of these powers might be detrimental to the business community. Consequently, the provisions were given a statutory life of three years in the first instance, with a proviso that they could be extended by resolution of the Legislative Council at the end of that period. By resolution of this Council on the 24th of May last, the operation of these two sections has been extended until the 1st of October next. As I explained in moving that resolution, I consider that these two sections have been well tested and that they should now be given permanent effect. The purpose of *clauses 5 and 6(e)* is to delete sections 51A(8) and 51B(5) which limit the life of sections 51A and 51B respectively. Honourable Members will note that *clause 6 (a)-(d)* provides that directions under section 51B must in future be given by the Commissioner or an authorized officer.

Fourthly, *clause 8*: this clause provides the Chairman of the Board of Review with the necessary authority to allow an appeal to be withdrawn, to dismiss an appeal where the appellant fails to attend, and to hear an appeal upon request of an appellant who is not in Hong Kong by receiving from him a written submission of his case.

Finally, *clause 10*: this clause is to make it clear that, where a person is prosecuted and convicted of an offence under section 80 involving an understatement of profits, that part of the penalty which is based on the amount of tax undercharged is in the nature of a fine and payable to the Court.

[THE FINANCIAL SECRETARY] **Inland Revenue (Amendment) (No 2) Bill—
second reading**

The remaining clauses, Sir, in the bill are either consequential to the amendments I have just explained or of a minor nature.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

Clause 2 exempts from tax liability payments made by an employer to an employee to meet the cost of transporting the employee's personal effects when travelling on a holiday warrant or passage provided by the employer.

2. Clause 3 extends section 24(2) (which at present applies to trade association only) to professional and business associations. As a result, a professional or business association which derives more than half of its receipts by way of subscriptions from persons who claim, or would be entitled to claim, that the sums so paid are deductible under section 16, shall be deemed to carry on a business and shall be chargeable to profits tax in the same way as trade associations.

3. Clause 4, which amends section 51(4), will enable an assessor to require any person to furnish information in regard to any matter which may affect the liability, responsibility or obligation of any person under the Ordinance. At present the assessor may require information only in regard to a particular matter and this is considered to be too restrictive.

4. Clauses 5 and 6(e) give permanent effect to sections 51A and 51B.

5. Clause 6 empowers officers of the Inland Revenue Department who are not named in a search warrant issued under section 51B to assist in its execution, under the direction of the officer to whom the warrant is issued.

6. Clause 7 clarifies, in three respects, the position of a person who objects to a personal assessment of total income in accordance with Part VII. Such an objection does not extend the time for making an objection under any other provision, validate an invalid objection or enable the amount of an assessment made under Part II, III, IV or V to be revised.

7. Clause 8 enables an appeal to be withdrawn and allows the Board of Review to hear an appeal in the absence of an appellant who is not in Hong Kong and who has applied to have the appeal heard in his absence; in such a case the Board may receive a written submission by the appellant of his case. Provision is also made for the dismissal of an appeal if the appellant fails to attend.

8. Clause 9 amends section 70 so as to provide that where an appeal is withdrawn or dismissed the assessment shall become final and conclusive.

9. Clause 10 makes it clear that the part of the penalty which is equal to "the amount of tax undercharged" is in the nature of a fine.

10. Clause 11 empowers the Commissioner to compound any offence under section 80A.

11. Clause 12 rectifies an anomaly in the wording of section 82, which at present provides for a penalty of a fine of \$2,000 or \$10,000, "and treble the amount of tax for which the person who evaded or attempted to evade tax is liable" for the relative year of assessment. The amendment provides that the penalty shall be a fine of \$2,000 or \$10,000, "and a further fine of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence has not been detected". The clause also makes a similar provision to that contained in clause 10.

TRAMWAY (AMENDMENT) (NO 2) BILL 1972

THE FINANCIAL SECRETARY (MR HADDON-CAVE) moved the second reading of: —"A bill to amend the Tramway Ordinance."

He said: — Sir, this seeks to amend section 50(1) of the Tramway Ordinance by removing the requirement to carry passengers in two classes, namely first class at a maximum fare of 20 cents and third class at a maximum fare of 10 cents, and to substitute a flat one class fare of 20 cents. The bill also, as a consequence, seeks to repeal section 52 of the principal Ordinance which requires the company to provide separate accommodation for third class passengers.

I have, in fact, Sir, explained the need for this bill earlier this afternoon when I moved the motion setting the royalty payable by the Hong Kong Tramways Limited for the year 1972 at nil—and honourable Members will, I am sure, not wish me to repeat what I said then. This bill is necessary because the fares on the tramway are fixed in the

[THE FINANCIAL SECRETARY] **Tramway (Amendment) (No 2) Bill — second reading**

Ordinance itself rather than in a separate schedule of fares as is the case with the two bus companies.

Motion made. That the debate on the second reading of the bill be adjourned—THE ATTORNEY GENERAL (MR ROBERTS).

Question put and agreed to.

Explanatory Memorandum

This Bill abolishes the distinction contained in the Tramway Ordinance between first and third class passengers. The Bill also provides that Hong Kong Tramways Limited may not charge a passenger fare in excess of twenty cents.

**MATRIMONIAL PROCEEDINGS AND PROPERTY
BILL 1972**

Resumption of debate on second reading (24th May 1972)

Question again proposed.

MR CHEUNG: —Sir, there is one provision in this bill which merits further consideration. I refer to subclause (1) of clause 7 to which my learned Friend the Attorney General referred when he introduced this bill on the second reading. This clause provides that in making orders for financial provision on divorce, or nullity or separation, the court is to exercise its powers, subject to certain qualifications, so as to put the parties in the same financial position in which they would have been if the marriage had not broken down and each spouse had properly discharged his or her obligations. The qualifications are three: first that the court must have regard to all the circumstances; second to have regard to the conduct of the parties; and third, to exercise its powers only in so far as it is practicable to do so.

The intention, as I discern it, although I don't discern it too clearly, is that the court should exercise its powers generally on the principles that had been developed in applying the former Matrimonial Causes Acts. However, I am left in doubt whether the subclause is not too imperative in its terms, and might be construed to mean that, unless there are exceptional circumstances, the court must strive to put both parties into the same position in which they would have been had the marriage not broken down. It has long been accepted that a wife who

has been little to blame, or not to blame at all, for a divorce ought to be put in as good a position as she would have been if her husband had behaved and there had been no divorce. But the courts have never done this, nor sought to do so, that is to say put her in the same position as if the marriage had not broken down, where she has been the cause of a divorce—in other words, where her conduct has brought about a divorce; nor, indeed, do I see that it would be right to do this. Perhaps the requirement of the court to have regard to the conduct of the parties and to do justice is intended to have some mitigating effect. I know that the Law Commissioners who recommended the enactment of this subclause in England produced a slightly different draft from that which was finally enacted in Parliament and which this bill has copied and, with respect, I think that the problem, which is to do justice to the parties having regard to their conduct and other circumstances, has not really been finally solved by the draftsman. I should therefore be grateful if my honourable Friend the Attorney General would give further consideration to this subclause.

The next subclause by contrast, dealing with financial provision for children, is perfectly fair and proper. Of course children should be placed in the same position as if the marriage of their parents had not broken down. But I am not persuaded that it is right to put a spouse who has been responsible for the breakdown in the same position as if the marriage had not broken down.

Sir, with those observations, I would support the motion.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I am glad the honourable Member has examined the last paragraph of clause 7(1) with such care because this is a very important provision, which is intended to serve as a general guide to the court when it decides what is the appropriate financial provision to make for the parties to a marriage when there has been a decree of divorce, nullity or judicial separation.

The general principle stated in the paragraph is that the parties should be generally placed in the same position financially as if the marriage had not broken down, although this is qualified in the manner which has been specified by the honourable Member.

Although this provision was said, in the Law Commission Report to which he has referred, to reproduce existing law, an examination of the authorities suggests that the Act may have made what was formerly only one of a number of factors to be taken into account the main principle to be followed.

[THE ATTORNEY GENERAL] **Matrimonial Proceedings and Property Bill—
resumption of debate on second reading
(24.5.72)**

It is, I think, desirable that this clause should not operate so as to give substantial financial benefit to a party whose conduct has been such that he deserves little benefit.

I do not think that the clause is meant to have that effect, but it is, perhaps, possible to construe it in this way. I should therefore like to have an opportunity to discuss the problem further with the honourable Member before the committee stage of the bill and to seek agreement with him as to what amendment, if any, ought to be made to this clause.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Committee stage

Council went into Committee.

CRIMINAL PROCEDURE (AMENDMENT) (NO 2) BILL 1972

HIS EXCELLENCY THE PRESIDENT: —With the concurrence of honourable Members we will take the clauses in blocks of not more than five.

Clauses 1 to 12 were agreed to.

Clause 13.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, I move that clause 13 be deleted. The object of clause 13 was to extend to the District Court and the magistrates' court the provisions of section 65D of the principal Ordinance, which requires that a notice of alibi be given by an accused who intends to raise this defence at his trial.

However, the terms of section 65D and of section 82 of the Magistrates Ordinance make it clear that the provision about notice of alibi is only intended to apply to trials on indictment before a jury. Accordingly, I move that clause 13 should be deleted.

Proposed Amendment

Clause

13 That clause 13 be deleted.

The deletion was agreed to.

Clauses 14 to 20 were agreed to.

Clause 21.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir I move that clause 21 be amended as set forth in the paper before honourable Members.

This amendment corrects a printing error, as a result of which the words contained in the amendment were omitted.

Proposed Amendment

Clause

21 That clause 21 be amended, in the new Sixth Schedule, by inserting in paragraph 2(2) after "may pass" the following—
 “in respect of the offence any sentence passed”.

The amendment was agreed to.

Clause 21, as amended, was agreed to.

Clauses 22 and 23 were agreed to.

Schedule.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir I move that the Schedule be amended as set forth in the paper before honourable Members.

The object of these amendments to the Juvenile Offenders Ordinance is to make it clear that the abolition of the right to make an unsworn statement applies also to persons accused before the juvenile courts.

Proposed Amendment

Schedule That the Schedule be amended by inserting, after the consequential amendments to the Mental Health Ordinance, the following—

“(Cap. 226.)	Juvenile Offenders Ordinance.	Section 8 is amended—
		(a) in subsection (4) by deleting "or to make any statement"; and
		(b) in subsection (5) by deleting "or for the purpose of explaining anything in the statement of the child or young person but not otherwise”.”.

The amendment was agreed to.

Schedule, as amended, was agreed to.

Council then resumed.

Third reading

THE ATTORNEY GENERAL (MR ROBERTS) reported that the

Criminal Procedure (Amendment) (No 2) Bill 1972

had passed through Committee with amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: —In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on Wednesday 21st June.

Accordingly adjourned at twenty-one minutes to five o'clock.